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)ChargeNo:2000 CF 0015
)EEOCNo(S):21 B 992645
)ALS No: 11323

1. Complainant filed a Charge of Discrimination against the Respondent with the Illinois Department of Human Rights (Department) on July 6, 1999.
2. On July 10, 2000, the Department filed a Complaint, on behalf of the Complainant, alleging Complainant to have been aggrieved by practices of sexual harassment, retaliation and retaliatory discharge discrimination in violation of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 et. seq.
3. Respondent filed a verified answer to the Complaint on September 21, 2000.
4. A scheduling order was entered September 21, 2000.
5. Respondent filed a Motion to Compel Discovery Responses on December 22, 2000. Included in the motion was a motion for sanctions of fees and costs.
6. On January 10, 2001, Complainant was ordered to file a response to Respondent's motion by February 13, 2001; Complainant did not file a response.
7. Respondent filed a reply in absence of Complainant's response on February 28, 2001.
8. On March 7, 2001, an order was entered giving Complainant a final chance to respond to Respondent's Motion to Compel no later than March 23, 2001.
9. Complainant filed a response on March 28, 2001.
10. On March 28, 2001, an order was entered continuing Respondent's motion to compel and motion for sanctions until May 2, 2001.
11. On May 2, 2001, an order was entered continuing Respondent's motion for sanctions and motion to compel until May 14, 2001.
12. On May 14, 2001, Respondent appeared; Complainant did not appear. Respondent represented that he had yet to receive discovery responses. A review of the record indicated that no proof of service as to discovery responses had been filed. An order was entered entering and continuing Respondent's pending motion to compel and

motion for sanctions until May 22, 2001. The order advised Complainant to appear on the next hearing date, to immediately file proof of service of all discovery responses, and to submit all discovery responses no later than May 21, 2001.

13. On May 22, 2001, both parties appeared through counsel. An order was entered granting Respondent's motion for attorney's fees and costs, ordering Respondent to file a fee petition by June 29, 2001, and setting a fee petition hearing for August 7, 2001. Also, a separate order granting Respondent's motion to compel was entered. Complainant was ordered to submit discovery no later than June 15, 2001.
14. On June 19, 2001, Respondent filed a motion to dismiss the Complaint contending Complainant had failed to submit discovery responses as ordered in my May 22, 2001 order.
15. On June 20, 2001, Respondent's motion to dismiss was entered and continued and a briefing schedule on summary decision motions was entered. Status was set for June 27, 2001.
16. Also, on June 20, 2001, Complainant filed proof of service as to Supplemental Responses to Respondent's First Request for Production by fax transmission.
17. On June 22, 2001, Respondent filed a petition for fees and costs and motion for reconsideration of scope of fees and costs.
18. Two subsequent orders were entered re-setting the June 27, 2001 status for July 17, 2001 and again for July 26, 2001.
19. On July 26, 2001, a telephone hearing was held. Respondent was available; Complainant was not available. An order was entered continuing the summary decision briefing schedule and ordering Complainant to fully and completely answer interrogatory #7C and file the answer, along with proof of service, with the Commission by August 3, 2001. The order warned Complainant that failure to comply may result in sanctions on sua sponte motion. Respondent's motion to dismiss was denied, as it appeared that Complainant had submitted discovery responses, except that interrogatory #7C was characterized as insufficient by Respondent.
20. On August 7, 2001, Respondent appeared; Complainant did not appear. Complainant had not filed a response to Respondent's fee petition. Respondent represented that Complainant had not answered discovery in accordance with my July 26, 2001 order. A review of the record indicated that no answer to discovery had been filed in compliance with my July 26, 2001 order. Respondent made an oral motion to dismiss the Complaint based on Complainant's failure to comply. I took the motion under advisement and set a new summary decision briefing schedule. Status was set for November 13, 2001.
21. On August 31, 2001, I issued an order on Respondent's fee petition. I awarded Respondent attorney's fees and costs for preparation of filing of its initial motion to compel and subsequent related hearings in the amount of \$11,873.70. I denied Respondent's motion to dismiss. The order cautioned Complainant that continued failure to comply with orders of this Commission may result in dismissal of this matter.
22. On November 13, 2001, Respondent appeared; Complainant did not appear. Respondent represented that Complainant still had not answered discovery in accordance with my July 26, 2001 order. Respondent made an oral motion to dismiss

for Complainant's failure to comply with discovery and I granted Respondent's motion.

Discussion

On May 22, 2001, I granted Respondent's motion to compel and for sanctions. The order indicated that Complainant had failed to appear for two scheduled hearing dates on Respondent's motions to compel and for sanctions. Although Complainant had notified the Commission both times that he would not be in attendance, I found that Complainant's conduct was unreasonable in that he did not utilize that extra time to respond to Respondent's discovery. Further, Complainant was not prepared at the May 22 hearing to tender the discovery answers. I ordered Respondent to file a fee petition by June 29, 2001. When the fee petition was heard on August 7, 2001, Complainant did not appear. A status was set for November 13, 2001.

On July 26, 2001, I held a telephone discovery status. Complainant was unavailable. I entered an order ordering Complainant to answer Respondent's outstanding discovery and to file proof of service with the Commission by August 3, 2001. I warned Complainant that failure to comply may result in sanctions.

On August 7, 2001, Complainant did not appear and had not filed a response to Respondent's fee petition. Respondent represented that he had yet to receive a complete response to his interrogatory #7C as required in my July 26, 2001 order. A review of the record indicated that Complainant had not filed proof of service with the Commission to evidence his delivery to the Respondent of the #7C response.

On the scheduled November 13, 2001 status, Respondent appeared; Complainant did not appear. Respondent advised that Complainant had still not complied with my discovery order and a review of the record indicated that Complainant had not filed proof of service of discovery answers as ordered in my July 26, 2001 order. Respondent made an oral motion to dismiss and I granted it.

Complainant failed to comply with the order of July 26, 2001 and failed to appear for the November 13, 2001 status, after being cautioned in my July 26, 2001 and August 31, 2001 orders that continued failure to comply with orders of this Commission may result in sanctions or dismissal of this matter.

The Illinois Human Rights Act at 775 ILCS 5/8A-102(I)(6), authorizes a recommended order of dismissal with prejudice or an order of default as a sanction for the failure of a party to prosecute his case or appear at a hearing or otherwise comply with this Act, the rules of the Commission, or a previous order of the hearing officer. Section 5300.750(e) of the Procedural Rules of the Illinois Human Rights Commission authorizes a recommendation of dismissal with prejudice as a sanction where a party has failed to appear at a scheduled hearing without requesting a continuance reasonably in advance, or

unreasonably refuses to comply with any Order entered, or otherwise engages in conduct which unreasonably delays proceedings.

Conclusions of Law

Complainant's failure to comply with my July 26, 2001 order to answer discovery and file proof of service of discovery answers with the Commission and failure to appear for the November 13, 2001 hearing have resulted in unreasonable delay of these proceedings, justifying dismissal of this matter with prejudice.

Determination

Complainant's conduct has resulted in unreasonable delay of these proceedings justifying dismissal of this matter with prejudice.

Recommendation

1. I recommend that this Complaint and the underlying Charge be dismissed with prejudice.
2. I further recommend that Respondent be awarded \$11,873.70 in attorney fees and costs as against Complainant, Gina Grezelka, and her attorney, David Bagdade, jointly and severally.

HUMAN RIGHTS COMMISSION

By: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section

ENTERED: JANUARY 29, 2002

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

SAMUELS RODGERS,

Complainant,

**and
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METRA R.R.,

Respondent.

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)Charge No:1999 CF
)EEOC No (S):21 B
)ALS No: 10986
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RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's Motion to Dismiss the Complaint. Respondent contends that the Complainant was recently deceased and the Complainant's attorney has taken no action to indicate he will be proceeding on this case.

Findings of Fact

23. Complainant filed a Charge of Discrimination against the Respondent with the Illinois Department of Human Rights (Department) on July 10, 1998, amended on April 1, 1999.
24. On August 25, 1999, the Department filed a Complaint on behalf of the Complainant alleging Complainant to have been aggrieved by practices of handicap discrimination in violation of the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 et. seq.
25. Respondent filed a motion to dismiss on October 12, 1999; Complainant filed a response on November 30, 1999 and Respondent filed a reply on December 17, 1999.
26. Respondent's motion to dismiss was denied on April 11, 2001.
27. Respondent filed an answer to the Complaint on April 23, 2001.
28. During the April 30, 2001 status, Complainant advised this tribunal of the Complainant's recent death. The matter was continued until July 30, 2001.
29. On July 30, 2001, Respondent appeared; Complainant did not appear; an order was entered setting a status for August 13, 2001.
30. On August 13, 2001, Respondent advised that the Complainant was deceased and requested dismissal of the matter. An order was entered ordering the Complainant to file a substitution of Party in accordance with Commission Procedural Rule 5300.660(b) or a motion for voluntary dismissal by August 27, 2001.

31. The August 13, 2001 order warned that failure to do so would result in a Recommended Order and Decision to dismiss the Complaint with Prejudice.
32. To date, no substitution of party, motion for voluntary dismissal or other pleadings have been filed by Complainant.

Discussion

Complainant's counsel appeared and advised this tribunal on April 30, 2001 of the Complainant's recent death; however, Complainant has failed to file a motion to substitute the Complainant within 90 days after the death was suggested or within the additional time as provided in my August 13, 2001 order. Further, Complainant did not appear at the last two status hearings on July 30, 2001 and August 13, 2001 and has failed to request an extension or do anything to indicate a desire to proceed with this matter.

Conclusions of Law

Section 5300.660(b) of the Commission Procedural Rules provides that the Complaint may be dismissed as to the deceased Party if a motion to substitute is not filed within 90 days after the death is suggested of record.

Determination

Complainant's failure to file a motion to substitute the deceased party justifies dismissal of this matter.

Recommendation

I recommend that this Complaint and the underlying Charge be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

By: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section

ENTERED: August 28, 2001